

FLEISCHMAN AND WALSH, L. L. P.

EX PARTE OR LATE FILED

ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P.C.

CHARLES S. WALSH

ARTHUR H. HARDING

STUART F. FELDSTEIN

RICHARD RUBIN

JEFFRY L. HARDIN

STEPHEN A. BOUCHARD

R. BRUCE BECKNER

HOWARD S. SHAPIRO

CHRISTOPHER G. WOOD

SETH A. DAVIDSON

WILLIAM F. ADLER

MATTHEW D. EMMER

JONATHAN R. SPENCER

DAVID D. BURNS

JILL KLEPPE McCLELLAND

STEVEN N. TEPLITZ

PETER T. NOONE*

ERIN R. BERMINGHAM

REGINA R. FAMIGLIETTI

MARK G. JOHNSTON*

1400 SIXTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

(202) 939-7900
FACSIMILE (202) 745-0916
INTERNET tw_law@clark.net

* NEW YORK AND NEW JERSEY BARS ONLY
* NEW YORK BAR ONLY

January 27, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Ex Parte Notice
MM Docket 92-260 (Cable Home Wiring)

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's Rules, I am writing on behalf of Time Warner New York City Cable Group ("Time Warner") to follow up on certain technical and engineering matters which arose at the informal panel discussion held on January 18, 1995 relating to the above-referenced proceeding on cable home wiring, and to submit photographs used at that discussion into the record in this proceeding.

Time Warner was surprised and shocked by the suggestion by representatives of Liberty Cable Company, Inc. ("Liberty") that SMATV operators do not have a signal leakage problem and that SMATV operators do not need to be governed by FCC signal leakage rules because they "voluntarily" comply with their "own" signal leakage criteria.¹ Liberty's position is entirely consistent

¹Time Warner notes that Liberty's statements purporting to trivialize the risks posed by signal leakage in MDU buildings
(continued...)

No. of Copies rec'd 04
Date 1/28

Mr. William F. Caton
January 27, 1995
Page 2

with the arrogant, above-the-law attitude Liberty has displayed throughout its existence.²

It is Time Warner's experience that cable television distribution facilities installed in multiple dwelling unit ("MDU") buildings, whether by SMATV operators or franchised cable operators, can be a significant source of signal leakage. Without question, signal leakage compliance presents some unique problems in the MDU context, for example, because landlords are often reluctant to authorize the repair or replacement of internal cable distribution facilities in MDUs which may be required to cure signal leakage. Nevertheless, Time Warner accepts the fact that it must bear ultimate responsibility for any leakage of signals it distributes.

The legislative history accompanying the cable home wiring provision of the 1992 Cable Act directs the Commission to be particularly attentive to signal leakage concerns in crafting home wiring rules:

Cable operators continue to have legal responsibility to prevent signal leakage, since improper installation or maintenance could threaten safety services that operate on critical frequencies. Nothing in this Section should be construed to create any right of a subscriber to inside wiring that would frustrate the cable operator's ability to prevent or protect against signal leakage³

Proposals currently pending before the Commission to move the "point of demarcation" in MDU buildings to a point far outside the interior premises of each unit, to the lockbox where the cable operator's "riser" cable is tapped to feed "homerun" cables leading to each unit, would inevitably exacerbate signal leakage

¹(...continued)
were vigorously disputed by John Wong, an FCC engineer with substantial experience in signal leakage enforcement matters.

²For example, in documents filed in connection with a lawsuit pending in the Southern District of New York, Liberty has admitted that it has been willfully and knowingly operating facilities which fall within the definition of "cable systems" pursuant to 47 U.S.C. § 522(6), without a franchise from New York City, in direct violation of 47 U.S.C. § 541(b)(1).

³House Report at 119.

Mr. William F. Caton
January 27, 1995
Page 3

problems and make it virtually impossible for the Commission to place responsibility on the appropriate party.

Time Warner has experienced numerous instances where Liberty has illegally broken into its lockboxes. Cables have been randomly disconnected, interfering with the provision of service to occupants desiring to continue to receive service from Time Warner. Identification tags have been maliciously removed from cables, making it extremely difficult for Time Warner to determine which cables serve which units. Lockboxes are left open, facilitating theft of cable service, a result Congress directly instructed the Commission to avoid.⁴ But most importantly, an "open lockbox" demarcation point can lead to disconnected cables which are not properly tapped-off, or home run drops which are not properly secured, which of course substantially increases the risk of signal leakage which could interfere with safety-of-life radio frequencies.

Attached are photographs and drawings which graphically illustrate the intolerable situation which would be created if the Commission were to move the point of demarcation in MDU buildings as advocated by Liberty and others. The first example was discovered on the 22nd floor at 200 E. 89th Street in New York City. The photograph shows the mess created by Liberty after Time Warner's lockbox was broken into. The drawing indicates what the lockbox looked like before Liberty's malicious actions. A similar example is also attached from 170 E. 87th Street.

In both instances, it is easy to see how such shoddy engineering practices employed by Liberty could readily lead to significant signal leakage. Moreover, if the Commission were to adopt the demarcation point advocated by Liberty, when incidents of signal leakage occur, the Commission would be drawn into

⁴As stated in the House Report, "The Committee is concerned especially about the potential for theft of service within apartment buildings. Therefore, this section limits the right to acquire home wiring to the cable installed within the interior premises of a subscriber's dwelling unit." House Report at 118. Congress plainly understood that moving the point of demarcation far outside individual dwelling units in MDU buildings would increase the incidence of theft of cable service. Accordingly, Congress directed the Commission to limit its home wiring rules to cable installed within the interior premises of each individual MDU unit, as the Commission properly did in its Report and Order.

Mr. William F. Caton
January 27, 1995
Page 4

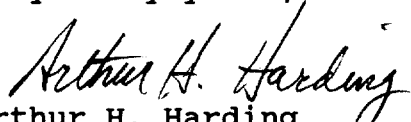
countless disputes in trying to determine which party should bear the responsibility.

Time Warner's vigilant efforts to guard against signal leakage depend upon its rigorous service quality standards which hold its employees accountable for the quality of their workmanship. In the type of situation described above, and as shown in the attached photographs, where a competitor is able to tamper with Time Warner's taps, connectors, and other facilities prone to cause leakage, it has become impossible for Time Warner to hold its employees responsible for the quality of work, technical performance, signal leakage, and ultimately for Time Warner to ensure that its customers continue to receive good service.

In other documents submitted to the Commission, Time Warner has detailed the compelling legal and policy reasons why the point of demarcation for cable home wiring in MDU buildings should not be altered. The technical, logistical and engineering grounds for maintaining the current demarcation point are equally crucial, especially as they relate to the Commission's critical responsibility to avoid harmful signal leakage.

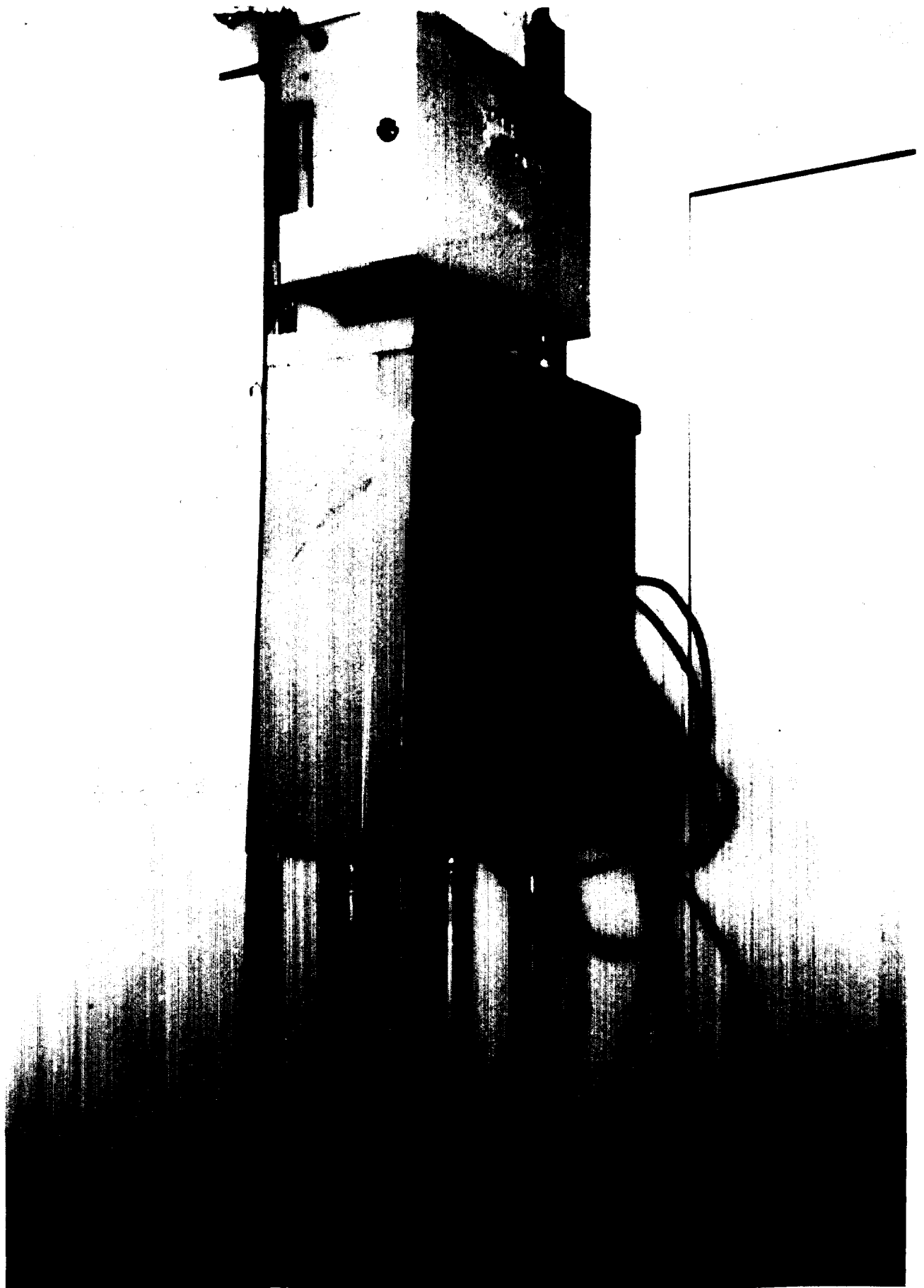
Please let me know if I can provide any additional information relating to this matter.

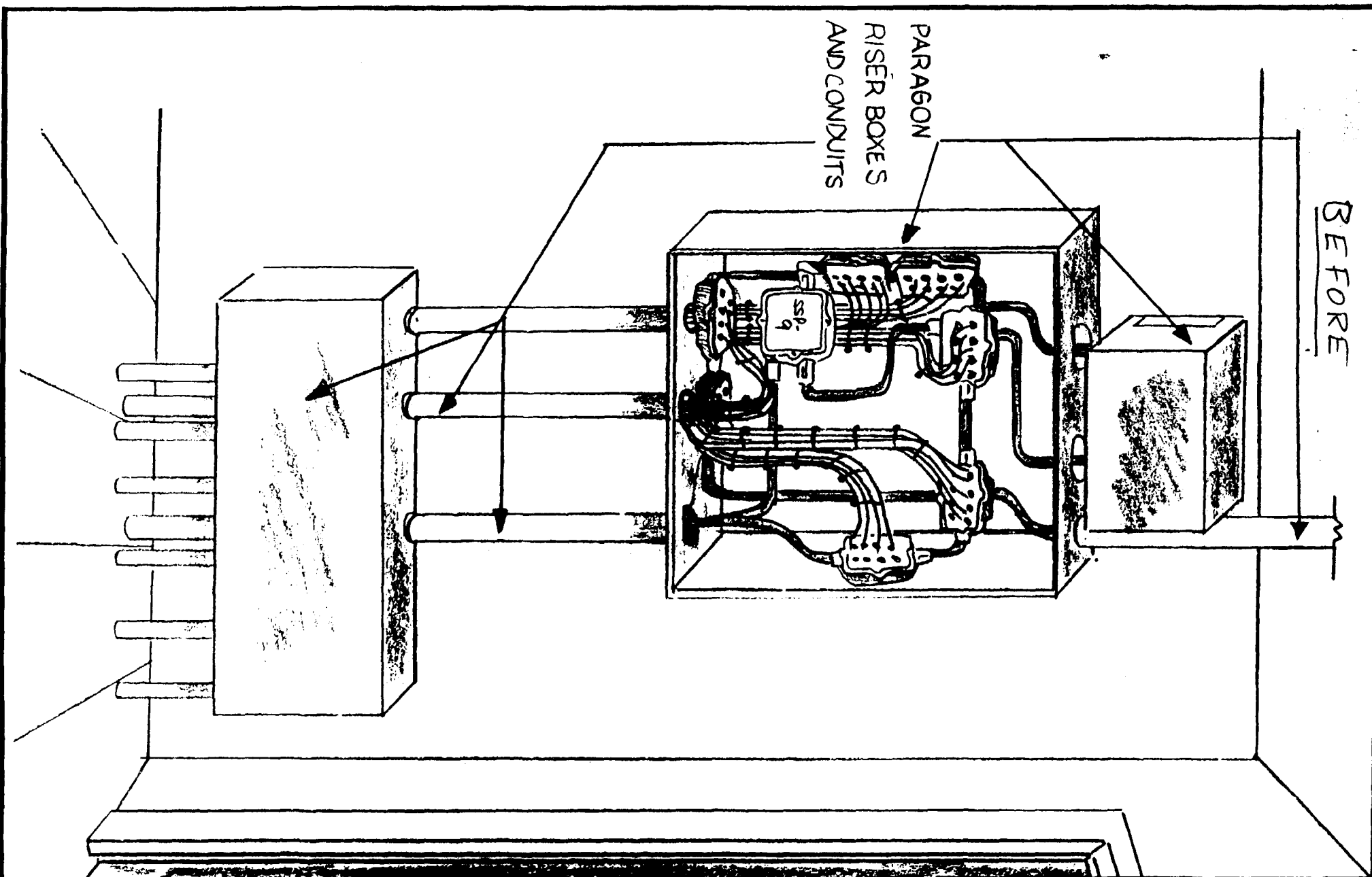
Very truly yours,


Arthur H. Harding
Counsel for Time Warner
New York City Cable Group

AHH:mbt
Enclosures

cc: Meredith Jones
Jill M. Lockett
Mary P. McManus
Maureen O'Connell
James W. Olson
Lisa Smith
Merrill Spiegel
Gregory J. Vogt
Lawrence A. Walke
John Wong





SYSTEM DESIGN SYMBOLS

412" CABLE	TRUNK BRIDGING	LINE EXTENDER	2 WAY SPLITTER
500" CABLE	2 WAY TRUNK BRIDGE ALC.	2 WAY LINE EXTENDER	3 WAY SPLITTER
750" CABLE	2 WAY TRUNK	POWER SUPPLY & COUPLER	DIRECTIONAL COUPLER
1000" CABLE	2 WAY TRUNK BRIDGE	IN LINE EQUALIZER	TAP 2 WAY
			TAP 4 WAY



PARAGON
CABLE

MANHATTAN

PROJECT NO.

BLOCK

LOT

TITLE 170 E 87 TH ST.

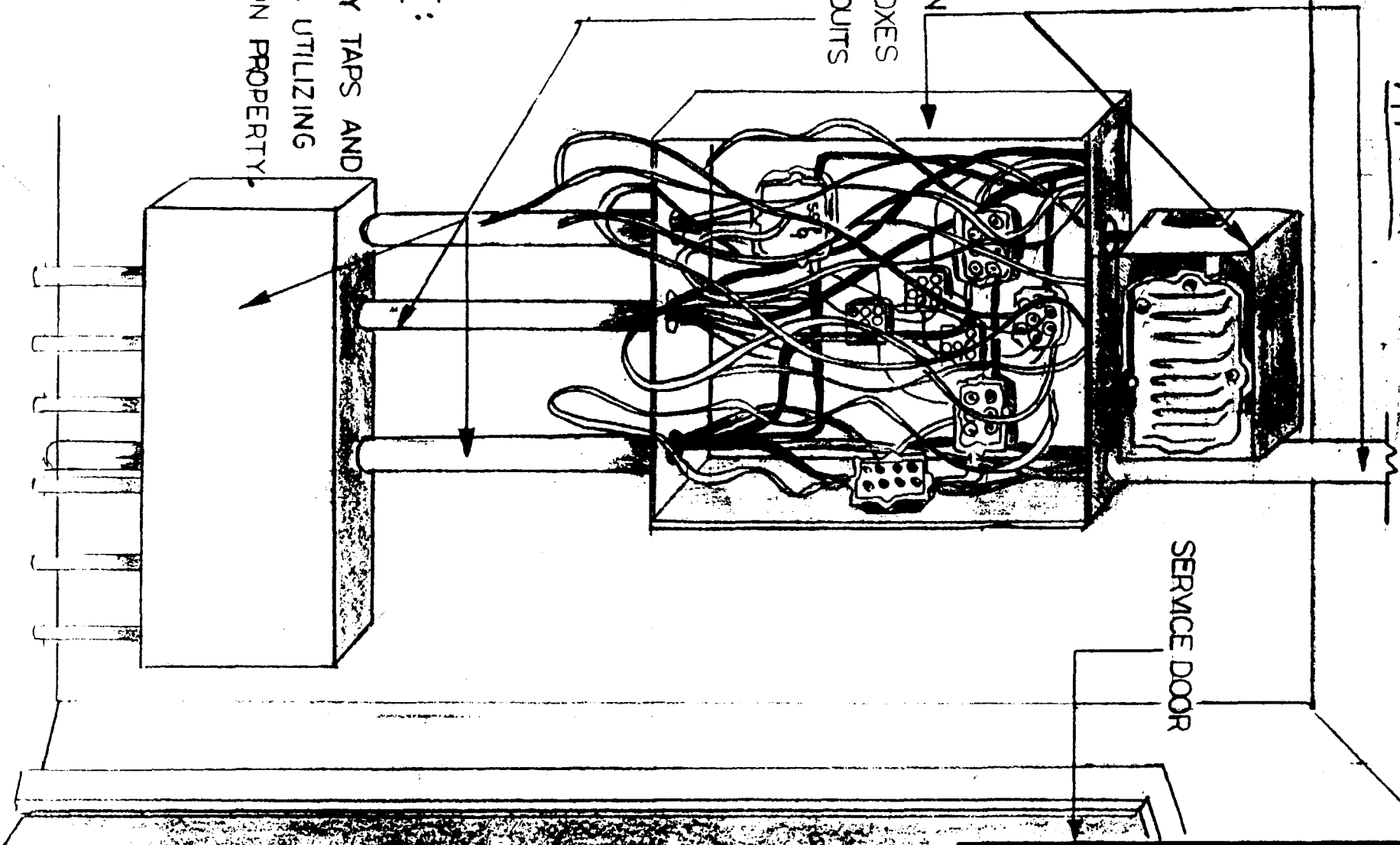
AFTER

PARAGON
RISER BOXES
AND CONDUITS

SERVICE DOOR

NOTE:

LIBERTY TAPS AND
CABLES UTILIZING
PARAGON PROPERTY



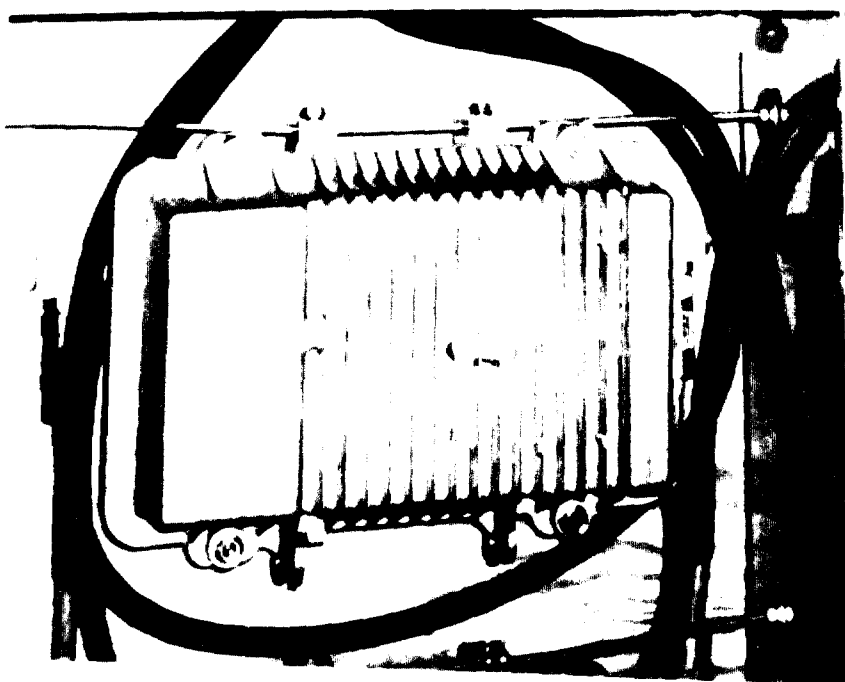
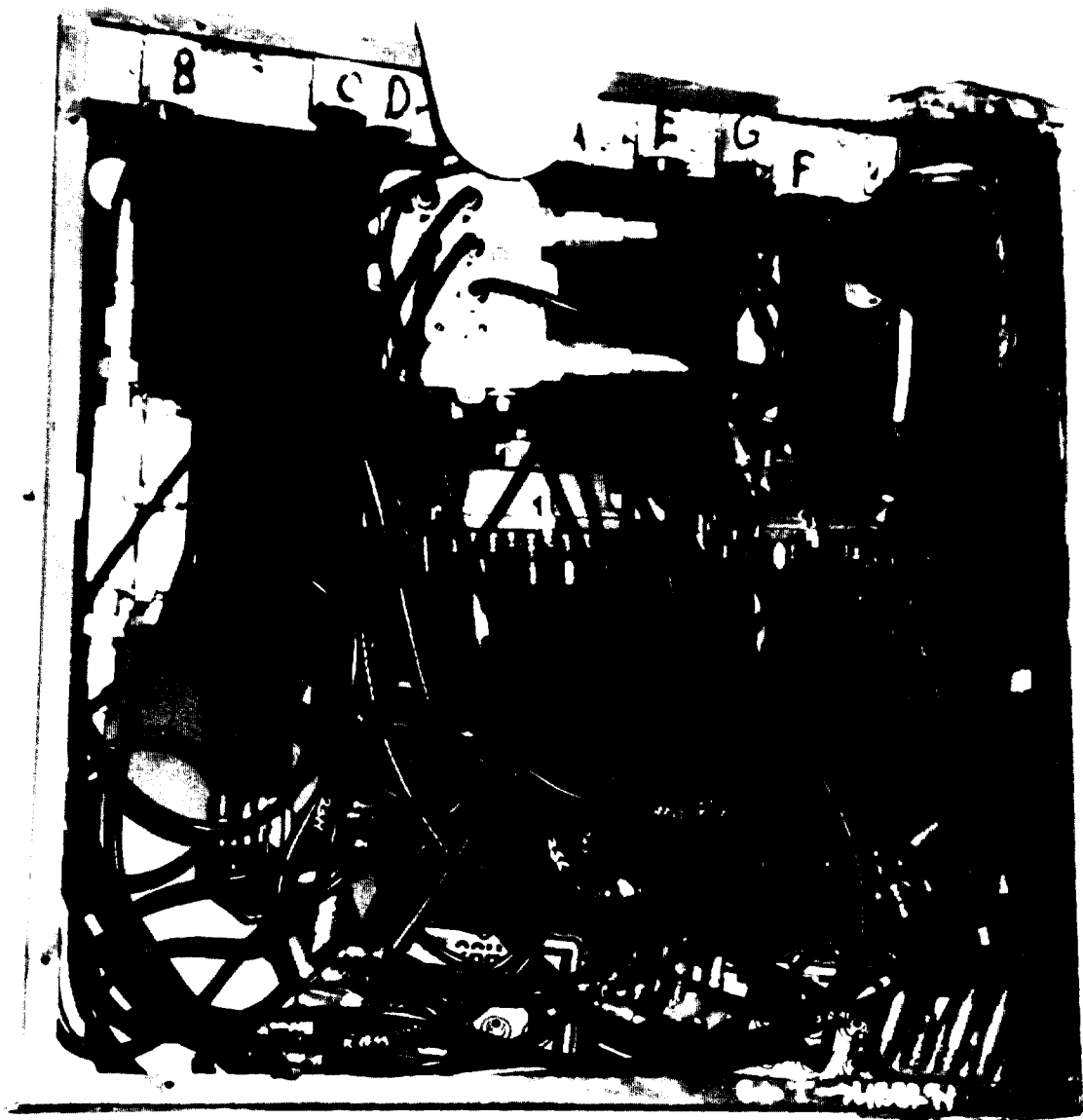
SYSTEM DESIGN SYMBOLS

412" CABLE	TRUNK BRIDGE	LINE EXTENDER	2 WAY SPLITTER
500" CABLE	2 WAY TRUNK-BRIDGE ALC.	2 WAY LINE EXTENDER	3 WAY SPLITTER
750" CABLE	2 WAY TRUNK	POWER SUPPLY & COUPLER	DIRECTIONAL COUPLER
1000" CABLE	2 WAY TRUNK BRIDGE W/ALC	IN LINE EQUALIZER	TAP 2 WAY
		TERMINATION	TAP 4 WAY
			TAP 6 WAY

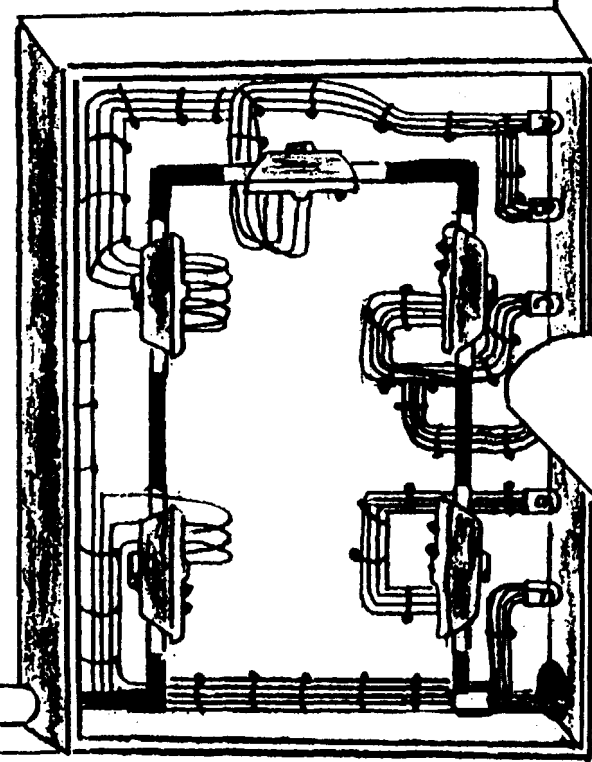


PARAGON
CABLE
MANHATTAN

PROJECT NO.	BLOCK	LOT
TITLE 170 E 87 TH ST		
DATE 2/24/11	SCALE	DRAWN BY



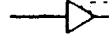










BEFORE



PARAGON RISER BOX AND CONDUIT

22 ND FLR.

SYSTEM DESIGN SYMBOLS

412" CABLE		TRUNK BRIDGING		LINE EXTENDER		2 WAY SPLITTER
500" CABLE		2 WAY TRUNK-BRIDG ALC.		2 WAY LINE EXTENDER		3 WAY SPLITTER
750" CABLE		2 WAY TRUNK		POWER SUPPLY & COUPLER		DIRECTIONAL COUPLER
				IN LINE EQUALIZER		TAP 2 WAY

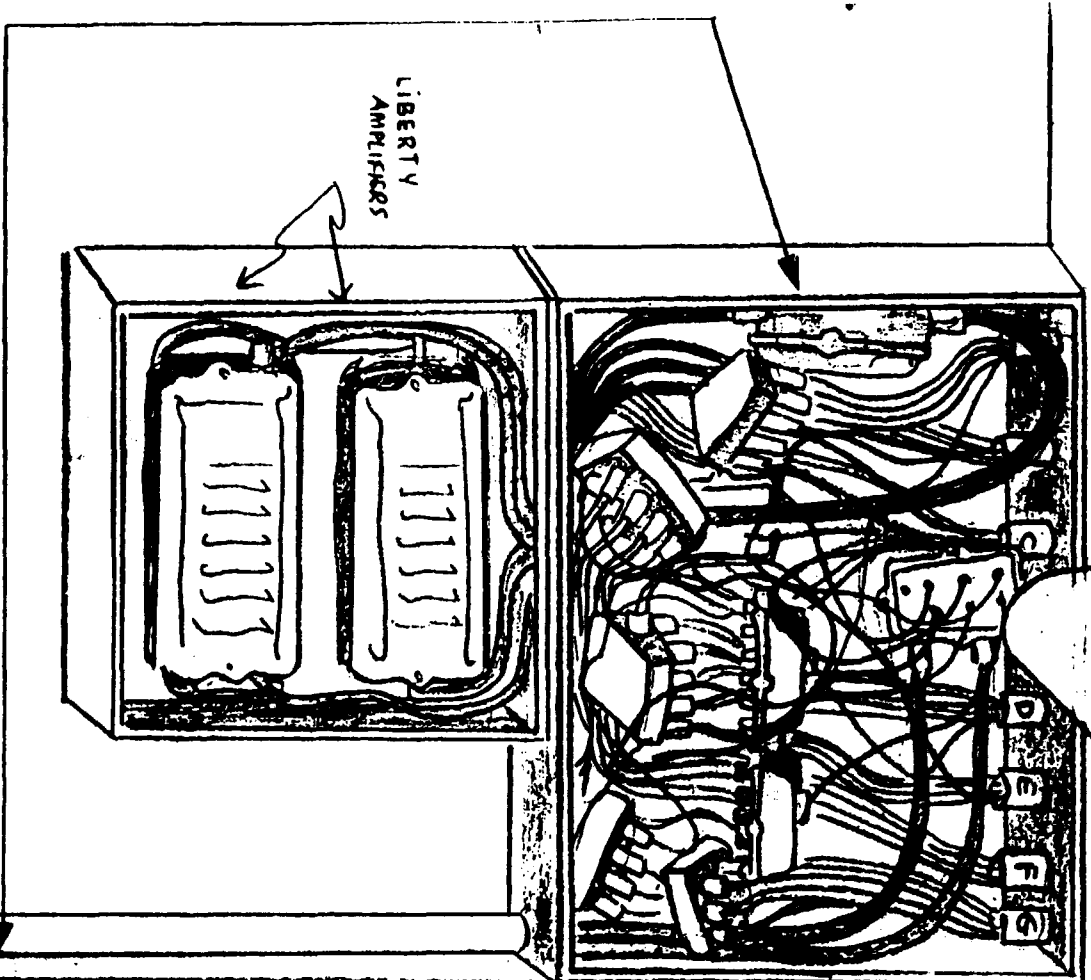


PARAGON
CABLE
MANHATTAN

PROJECT NO. BLOCK LOT

TITLE 200 F 89 TH ST.

AFTER



LIBERTY SYSTEM UTILIZING
PARAGON RISER BOX AND CONDUIT

22 ND FLR.

SYSTEM DESIGN SYMBOLS

412" CABLE	TRUNK BRIDGING	LINE EXTENDER	2 WAY SPLITTER
500" CABLE	2 WAY TRUNK-BRIDG ALC.	2 WAY LINE EXTENDER	3 WAY SPLITTER
750" CABLE	2 WAY TRUNK	POWER SUPPLY & COUPLER	DIRECTIONAL COUPLER
		IN LINE EQUALIZER	TAP 2 WAY
			TAP 4 WAY



PARAGON
CABLE
MANHATTAN

PROJECT NO.	BLOCK	LOT
TITLE 200 E 89 TH ST.		